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SUBJECT: NCP-SPLM DISAGREEMENT ON KEY LEGISLATION PREVENTS NATIONAL ASSEMBLY FROM RECONVENING

REFS: A. KHARTOUM 182

[¶](#)B. KHARTOUM 149

[¶](#)C. KHARTOUM 060

[¶](#)11. (SBU) SUMMARY. According to GNU State Minister of Justice Wek Mamer Kuol (SPLM) the National Congress Party (NCP) and the Sudan People's Liberation Movement (SPLM) are discussing eleven pieces of outstanding CPA-related legislation. While the two parties have agreed upon several of the draft bills, there is still heated disagreement on others, including the security law, the media/press law, and the referendum law. According to Minister Wek and Chairman of the SPLM Caucus on the National Assembly Manoah Aligo Donga, the NCP is insisting that the SPLM negotiate with it on post-2011 referendum arrangements (particularly regarding wealth-sharing, Nile water rights, and North/South border demarcation) before it will agree to a Southern Sudan Referendum Law. While in December 2008 the parties had agreed to extend and reconvene the previous parliamentary session on February 2, 2009 in order to review and ratify pending legislation, this has not happened. Deputy Speaker of the National Assembly Atem Garang (SPLM) predicted that the Assembly will not reconvene before its normal session in April 2009 unless pending legislation has been tabled for its action. END SUMMARY.

ELEVEN CRITICAL LAWS UNDER DISCUSSION

[¶](#)12. (SBU) On 9 and 22 February, emboffs met with Government of National Unity (GNU) State Minister of Justice Wek Mamer Kuol (SPLM) to follow-up on Wek's presentation to the Assessment and Evaluation Committee on pending CPA-related legislation (ref A). Wek said that the SPLM and the NCP are now discussing eleven pieces of legislation. According to Wek, the two parties have agreed on three of these (the Human Rights Commission Law, the Land Commission Law, and the Criminal Code), and the agreed drafts are ready for parliamentary approval. The parties had agreed on a draft media/press law at the end of 2008, but the bill was never tabled for parliamentary review by the Council of Ministers. There is still no agreement on the national security law, a key piece of legislation critical to facilitating free and fair elections. In addition, the parties are still discussing the Southern Sudan Referendum Act, the Criminal Procedures Act, the Trade Union Act, and the Civil Procedures law. The SPLM also has proposed two additional laws: one governing the Abyei Referendum, the other for the popular consultations in Blue Nile and Southern Kordofan.

THREE LEVELS OF CONSULTATION

[¶](#)13. (SBU) Wek described a three-level process for vetting the laws. The SPLM and the NCP first discuss legislation in the Joint Legal Committee (JLC), chaired by GNU Minister of Justice Abdel-Basset Sabdarat (NCP) and GoSS Minister of Legal Affairs and Constitutional Development Michael Makuei Lueth(SPLM). Wek said that in the JLC

the SPLM seeks to ensure that draft legislation complies with the provisions of the CPA and Sudan's provisional constitution. If agreement on legislation cannot be reached at this level, it is kicked up to the SPLM-NCP Political Executive Committee, which is chaired by GNU Vice President Ali Osman Taha and GoSS Vice President Riek Machar. If the parties still cannot agree at the second level of deliberation, it is passed to the GNU Presidency for resolution (such as happened with the final elements of the national electoral law in 2008).

LEGISLATION IN DISPUTE

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¶4. (SBU) According to Wek, the biggest gulf between the two parties is on the security law, where there is disagreement both on the structure and the function of the National Intelligence and Security Service (NISS) (ref C). The SPLM argues that the National Intelligence and Security Service (NISS) should not have the authority to arrest and detain individuals without consent from the Attorney General first. Secondly, the SPLM argues that the selection of the NISS Director and his deputies should be a consensus-based decision by the institution of the Presidency. The NCP wants to see NISS keep its unchecked arrest authority and argues that the GNU President alone should be able to appoint the NISS director and his deputies.

¶5. (SBU) Wek said that the NCP and the SPLM had tentatively agreed upon a reformed press/media law at the level of the NCP-SPLM Joint Legal Committee in October 2008, but that the item was subsequently withdrawn from the Council of Ministers meeting agenda by the NCP and therefore never tabled for the National Assembly's review. On 18 February at the Political Executive Committee meeting, the NCP raised new objections to the draft bill and provided these in

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writing to the SPLM on 22 February. On 22 February, State Minister Wek told poloff that the SPLM was reviewing these objections, most of which center around the proposed press/media code of conduct in the draft law. The Joint Legal Committee will meet again on 24 February to review the press/media law.

¶6. (SBU) Wek said that there is also disagreement on the SPLM-proposed southern Sudan Referendum Bill. According to Wek and SPLM Parliamentary Caucus Chairman Manoah Aligo Donga, the NCP wants to first negotiate post-2011 arrangements such as wealth-sharing, nationality and rights, national debt and assets, Nile water agreements, joint integrated units (JIUs), and North/South border demarcation, before agreeing to a Southern Sudan Referendum Law. Ideally for the NCP, these arrangements would be included in the law (ref A). The SPLM argues that post-2011 political arrangements should be handled separately from the legal development of the southern Sudan referendum bill. Wek and Manoah also stated that the NCP has procedural objections to the SPLM's draft referendum bill, particularly regarding the referendum's registration rules and the definition of who will be eligible to participate in the referendum vote. A draft of the bill provided to emboffs by Manoah Aligo Donga defines eligible voters as those:

(a) "whose either parent or grandparent is or was a member of any indigenous community existing in Southern Sudan before or on January 1, 1956; or whose ancestry can be traced through agnatic or male line to any one of the ethnic communities of Southern Sudan; or
(b) Who has been permanently residing or whose mother and/or father or any grandparent have been permanently residing, uninterrupted, in Southern Sudan as of January 1, 1956"

The NCP argues that a wider number of citizens should be defined as "Southerners," including Sudanese citizens who have lived in the South for a shorter period of time or whose distant ancestors are from the region. Wek told emboffs on 9 February that the NCP had claimed the bill was "drafted by the Americans."

¶7. (SBU) The SPLM has proposed two draft laws that the NCP is reluctant to discuss: an Abyei Referendum Law and a law that governs the popular consultations in Blue Nile and Southern Kordofan. According to Wek, the NCP deems these two laws unnecessary since they are not specifically called for in the interim national

constitution or the Comprehensive Peace Agreement (CPA) (ref A). The SPLM counters that a more specific legal framework is needed for these critical CPA processes to be conducted. On 22 February, Wek said that the NCP finally agreed that the laws could be discussed, but said that it prefers to wait for the Abyei arbitration results to be released before discussing the Abyei Referendum Bill. The SPLM argued that the arbitration results and the bill have no bearing on one another.

WHERE IS THE NATIONAL ASSEMBLY?

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18. (SBU) In December 2008, the NCP and the SPLM agreed to extend the National Assembly (NA) parliamentary session in order to address pending legislation before national elections. According to the informal agreement between the parties, the NA was supposed to resume on February 2. NA Deputy Speaker Atem Garang (SPLM) told poloff on 16 February that because pending legislation has not been tabled by the Council of Ministers for the NA's review and ratification, the NA Parliamentary Affairs Committee, chaired by the NA Speaker Ibrahim Tahir (NCP), determined that Parliament should not reconvene until there is "substantial" legislation for the assembly members to discuss. Garang expressed concern that if legislation is not tabled by the Council of Ministers or the Presidency for the National Assembly's review and approval soon, there will be little time left for the body to pass key legislation before elections are held. According to Garang, the next regular session of Parliament is to begin in April and end in June. In poloffs' February 9th meeting with State Minister Wek, Wek also expressed concern that the National Assembly session agreed upon by the parties has not yet reconvened.

COMMENT

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19. (SBU) The SPLM and the NCP continue to disagree on important legislation that needs reform prior to national elections. Not surprisingly, the NCP continues to play "hardball," willing to discuss all issues and tantalize with a vision of real progress but always looking to extract the maximum price from its peace partner. We understand from contacts in both parties that they are engaged in negotiations on a package deal regarding the elections and referendum (the SPLM allows the election to go forward, which the NCP needs to gain much needed legitimacy for President Bashir, in

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exchange for guarantees on the South's referendum.) While the SPLM was successful in extracting a small concession from the NCP to extend the October 2008 parliamentary session into 2009, a parliamentary extension doesn't do much good if the members of parliament do not have legislation to debate and ratify. We will continue to urge the parties to reach agreement on key legislation, specifically the media/press, the security, and referendum laws, through the Assessment and Evaluation Commission (AEC) and directly. It needs to be constantly made clear to the NCP that full implementation of the CPA, in a constructive, positive spirit (which has often been lacking), remains a basic demand of the United States in its relations with the Khartoum regime. We will also continue to encourage the parties to draw up post-2011 arrangements in order to be prepared for separation or unity as a result of the southern referendum vote, but will urge that any political agreements are conducted separately from a legal discussion of the southern Sudan referendum law. The biggest challenges for the CPA are immediate, even before we reach 2011. End Comment.

FERNANDEZ